

REMARKS

This Request is accompanied by a Notice of Appeal.

The examiner noted Applicant's response to the examiner's prior inquiry regarding the existence of references from ATPCO earlier than 1994 or between 1994 and 2001. Applicant requested that the examiner set out her reasons why she believes the references to exist, by she has not done so. Again Applicant requests that she set forth her reasons why they exist or whether the examiner knows of the existence of other references.

The examiner withdrew the new matter, indefiniteness and non-patentable subject matter rejections.

The examiner maintained her rejection of claims 1-46 and 52-53 under 35 U.S.C. 102(e), as being anticipated by "Gardner," in view of Applicant's Background of the invention (AAPA).

At the outset, Applicant notes that the examiner changed the statutory basis for her rejection agreeing that a rejection of a claim as being anticipated must be made with regard to a single reference that contains all of the limitations of the claim, arranged as in the claim.

Accordingly, Applicant contends that the finality of this rejection is improper because the examiner's new rejection was not made or occasioned by the amendments made to Applicant's claims, but resulted from the examiner comprehending the error in her rejection in the first office action.

Applicant will address the outstanding rejections. On page 1, Applicant's background describes:

The fare construction process solves this problem by providing a mechanism to "extend" a published fare with add-ons also called arbitraries, in order to derive prices to minor cities. An arbitrary, like a published fare, lists two cities. However, unlike cities in a published fare (which establish a bidirectional market), the cities in an arbitrary are ordered: the first is the gateway (or major) city, and the second is the interior (or minor) city.

Applicant's claim 1 calls for *** determining interior cities that appear with gateway cities in arbitraries for an airline, the arbitraries being published amounts and an order set of two cities that extend published fares that include an amount for travel between two cities to provide a bi-

directional market, searching a database having published fares for gateway cities corresponding to the determined interior cities appearing in the arbitraries.

Claim 1 also requires producing the constructed fare, by applying an arbitrary corresponding to one of the interior cities to a published fare involving one of the gateway cities that corresponds to the determined interior cities appearing in the arbitraries to produce a constructed fare.

The examiner considers reasons that:

Gardner discloses published fares and unpublished fares. A published fare is defined in APTCO (sic) as an amount published for use in pricing air transportation from one city to another city. This would include gateway cities and minor cities. An unpublished fare is the combination of an add-on amount and a published fare amount resulting in an amount used in pricing air transportation from one city to another city. Unpublished fares are also referred to as "through fares," "constructed fares" and "behind point fares." page 58 of ATPCO. Gardner does not explicitly disclose arbitrary fares.

However, APTCO (sic) discloses arbitrary fares as an amount published for use only in combination with other fares for the construction of through fares, also referred to as "proportional fare," "basing fare" or "add-on fare (page 58)." ATPCO also discloses add-ons or arbitrary fares as being bidirectional and that the first city displayed is the gateway (page 60). ATPCO further discloses add-on plus published fare equals unpublished or constructed fares (page 58).

ATPCO defines file structures for a batch processing of the constructed fares, as was pointed out by Applicant in the background of the invention. ATPCO fails to describe any processing that suggests the above recited features of Applicant's claims. Gardner, is even less relevant. Gardner merely describes a system that can access published fares and unpublished fares. Gardner offers no techniques for constructing the unpublished fares, but merely accesses an unpublished fare table that is produced by:

[0098] For each component identified, pricing services driver 180 typically will seek to determine the unpublished fare for the component. This process typically involves retrieving the agreements and calling unpublished footnote retrieval/validation module 190. After doing this, the unpublished fare is retrieved using unpublished fare retrieval/validation module 194. Next, the published routings retrieval/validation module 196 is called. Additionally, the process returns an array of unpublished fares.

[0101] By following these processes, the pricing services driver 180 can create a separate published and unpublished fares array for each component within a pricing entity (not shown). Previously, fares arrays were only unique within each component. Now they will be unique by component, within each pricing entity.

Gardner fails to describe any process that produces the unpublished fares. Gardner merely describes a process to retrieve unpublished fares.

It was Applicant that first pointed out to the office that in a fare construction process published fares are extended with so-called add-ons or arbitraries. (See Background, Reply to Action of December 23, 2002, and so forth). Applicant does not believe that the unpublished fares of Gardner correspond to the add-ons or arbitraries, as claimed in claim 1, since according to Gardner they are unpublished, do not extend published fares and are not describe by Gardner as ordered whereas, claim 1 requires the arbitraries being published amounts and an order set of two cities that extend published fares that include an amount for travel between two cities to provide a bi-directional market.

ATPCO states that processing for fare construction is:

PRINCIPLES OF FARE CONSTRUCTION

DEFINITION OF PUBLISHED FARE

Published fare means an amount published (filed/GFS'd) for use in pricing air transportation from one city to another city. Published fares price in fare quote systems.

DEFINITION OF ARBITRARY

Arbitrary means an amount published for use only in combination with other fares for the construction of through fares. It is also referred to as "proportional fare", "basing fare", and "add-on-fare". Arbitraries cannot be priced in fare quote systems.

DEFINITION OF UNPUBLISHED FARE

Unpublished fare means the combination of an addon amount and a published fare amount resulting in an amount used in pricing air transportation from one city to another city. Also referred to as "through fares", "constructed fares" and "behind point fares". Unpublished fares price in fare quote systems.

This is how unpublished fares are constructed:

addon + published fare = unpublished fare
published fare + addon = unpublished fare
addon + published fare + addon = unpublished fare

ATPCO's description of how unpublished fares are constructed is merely taking an addon and adding it to a published fare. ATPCO does recognize that this is a simple text book example, (Page 59) but, ATPCO is silent on any pre-processing that is used to make that computation more efficient. Rather, ATPCO merely suggests a batch type process See pages 2-32. The examiner's attention is specifically drawn to page 18, a portion of which is reproduced below:

J) GATEWAY UPDATE

- 1) Enter all arbitrary headline points whether the carrier constructs or doesn't construct.
- 2) Enter tariff/carrier/country/gateway and 'A' for add and 'D' for delete.
- 3) The country is determined by the sideline point. For example: NYC-WAS the entry would be tofu/aa/us/nyc, but AMS-BRU would be tofu/aa/be/ams.
- 4) Nonconstructed carrier's gateways are added because the arbitrary batch edit checks for valid gateways.

ATPCO teaches to enter all headline points for the Gateway update, whether or not the carrier constructs. This passage is merely one example showing that ATPCO clearly teaches away from the preprocessing in Claim 1.

The examiner also contends that: "It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate arbitrary fares as taught by ATPCO with the published fares as taught by Gardner since Gardner discloses unpublished fares which is an add-on amount and thus an arbitrary for the purpose of providing better passenger service."

Applicant does not understand this motivation. The examiner appears to state that the combination of Gardner, AAPA, and ATPCO, would motivate one to "incorporate arbitrary fares as taught by ATPCO with the published fares." This is already taught by AAPA and ATPCO. The examiner then states that: "since Gardner discloses unpublished fares which is an add-on amount and thus an arbitrary." The examiner appears to suggest that one would take the published fares and add them to the unpublished fares.

Claims 2-13 add distinguishing features that are not shown by the references as of record.

Claim 14 likewise distinguishes over the reference for analogous reasons and for the reasons of record. For example, Claim 14 recites determining interior cities that appear with gateway cities in arbitraries for the particular airline, ... searching for gateway cities corresponding to the determined interior cities ... and applying arbitraries corresponding to the determined interior cities to published fares involving the gateway cities ... to produce the set of constructed fares for the airline. At least these features of claim 14, and its dependent claims are neither described nor suggested by the reference generally for the reasons discussed above.

Claim 22 recites similar limitations as claims 1 and 14 and with its dependent claims are neither described nor suggested by the reference generally for the reasons discussed above.

Claim 35 is a computer program product claim reciting generally analogous features and with its dependent claims are neither described nor suggested by the reference generally for the reasons discussed above. Claim 43 is directed to a computer system and is allowable at least for the reasons discussed above.

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Claim 52 is distinct over the reference, since the reference neither describes nor suggests accessing a first hash table by airline interior city pair to return a list of gateway cities for which an airline has arbitraries that specify the interior city,... accessing a second hash table by airline gateway pair to return a second list of gateway cities that an airline publishes fares from to determine a gateway to another gateway city and applying the first arbitraries from the first hash table to the published fares from the second hash table to return a list of potential constructed fares.

Enclosed is a \$450 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: _____

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